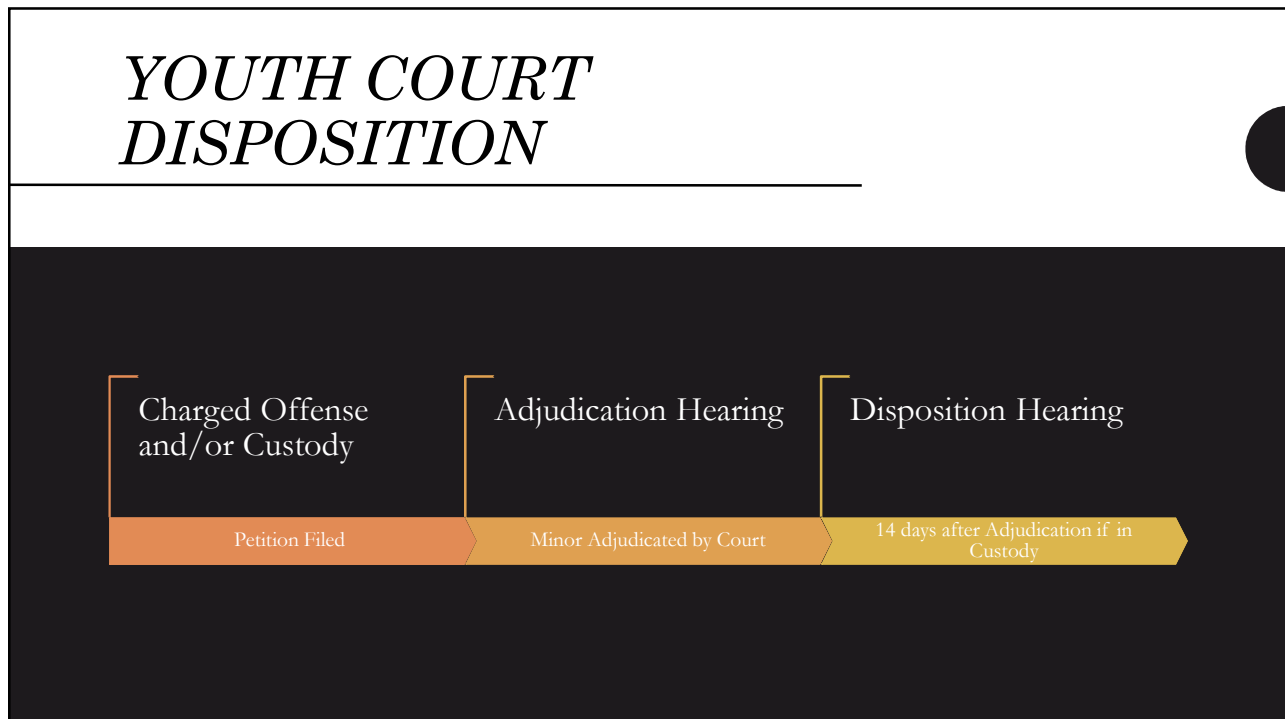


# CLIENT ADVOCACY AT DISPOSITION: FOCUS ON CLIENT'S REHABILITATIVE NEEDS

OSPD 2021 Virtual  
Spring Juvenile Defender Seminar

1



2

# FOCUS OF DISPOSITION

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3

## PURPOSE OF YOUTH COURT IN DELINQUENCY

- Promote healthy development of children
  - Enhance public safety
  - Accountability
  - Children not treated as criminals, but rather in need of aid, encouragement, and guidance
  - Focus on rehabilitation
  - Civil, but *quasi* criminal
  - Best interest of the minor child
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4

## DIFFERENCE BETWEEN JUVENILE (YOUTH) COURT AND ADULT (CIRCUIT) COURT

JUVENILE SYSTEM	ADULT SYSTEM
Goal of rehabilitation and prevent future delinquent acts	Goal is to punish the offender and deter crime
No right to jury trial	Constitutional right to jury trial
Judge makes decision regarding outcome of case	Judge or jury, depending upon case type, determine outcome of case

5

## VENUE FOR DISPOSITION

- After adjudication, venue for disposition may be:
  - Adjudicating court
  - County where child resides
  - County where a youth court has previously acquired jurisdiction
  - In re K.A.R., 441 So. 2d 108, 109 (Miss. 1983) (“[E]ach judicial district is to be treated as a separate county for purposes of jurisdiction and venue . . .”).

Miss. Code Ann. § 43-21-455(1); U.R.Y.C.P. 21.

6

## NOTICE OF DISPOSITION HEARING

- Service of summons
- No summons necessary if (1) already served with summons or made an appearance AND (2) received sufficient notice of time, date, place, and purpose of disposition hearing

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Miss. Code Ann. § 43-21-501 to 507; U.R.Y.C.P. 22.

7

## TIMING OF DISPOSITION HEARING

- Separate from Adjudication Hearing
- Immediately after Adjudication Hearing unless continuance necessary to allow for preparation
- If minor in custody it must be held within fourteen (14) days after adjudication unless good cause shown

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Miss. Code Ann. § 43-21-601; U.R.Y.C.P. 26; .

8

## DISPOSITION ON MULTIPLE COUNTS

- Adjudicated on more than one count
  - Disposition can run concurrent or consecutive
  - Evaluation of best interest of the child and interest of justice

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Miss. Code Ann. § 43-21-455; U.R.Y.C.P. 20.

9

## CONDUCT OF DISPOSITION HEARING

- Only those having a direct interest in the cause or work of the court may be in courtroom
- A record of all evidence shall be taken
- Any person with a direct interest shall have the right to appear and be represented
- Court may exclude attendance of a child for portion that would be injurious to best interest of minor with consent of child's counsel

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Miss. Code Ann. § 43-21-203, 603; U.R.Y.C.P. 26; .

10

## FACTORS TO BE CONSIDERED BY COURT

- Nature of the offense;
- Manner in which the offense was committed;
- Nature and number of a child's prior adjudicated offenses;
- Child's need for care and assistance;
- Child's current medical history, including medication and diagnosis;
- Child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);

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Miss. Code Ann. § 43-21-603; 43-27-25; U.R.Y.C.P. 26.

11

## FACTORS TO BE CONSIDERED BY COURT (CONT.)

- Copies of the child's cumulative record from the last school of record, including special education records, if applicable;
- Recommendation from the school of record based on areas of remediation needed;
- Disciplinary records from the school of record; and
- Records of disciplinary actions outside of the school setting.

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Miss. Code Ann. § 43-21-603; 43-27-25; U.R.Y.C.P. 26.

12

## AUTHORIZED DELINQUENCY DISPOSITIONS

- The disposition order may include any of the alternatives set forth in MCA § 43-21-609.
  - drug testing,
  - special care needs,
  - custodial support payments,
  - counseling and parenting classes for parents or guardians if the child is placed in a state supported training school,
  - persons to abide by conduct that is reasonable and necessary for the welfare of the child,
  - financially able parents to pay for court ordered medical examinations and treatment, reasonable attorney fees, court costs, and other expenses,
  - custodial parents, guardians, or custodians to pay restitution or damages and to receive counseling, and
  - enrollment or reenrollment in school of a compulsory-school-age child.

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See U.R.Y.C.P. 26 and 27; §§ 43-21-601, -603, and -607.

13

## DISPOSITIONS FOR CHINS

- The disposition order may include any of the alternatives set forth in MCA § 43-21-609 for a Child in Need of Supervision (CHINS).
  - drug testing,
  - special care needs,
  - custodial support payments,
  - financially able parents to pay for court ordered medical examinations and treatment, reasonable attorney fees, court costs, and other expenses,
  - custodial parents, guardians, or custodians to pay restitution or damages and to receive counseling, and
  - enrollment or reenrollment in school of a compulsory-school-age child.

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U.R.Y.C.P. 26 and 27; §§ 43-21-601, -603, and -607.

14

## VALID COURT ORDER

- Violating a valid court order allows a status offender to be held in detention
- Court conducts a probable cause hearing within twenty-four (24) hours of the child being ordered to secure juvenile detention, excluding Saturdays, Sundays, and statutory state holidays, for the violation of the valid court order
- Court conducts an adjudication hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays
- Court conducts a separate and distinct disposition hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays
- Department of Human Services, Division of Youth Services submits to the court a written report that contains: a review of the child's behavior; a determination of the reasons for that behavior; and a determination that all other dispositions other than secure juvenile detention are inappropriate
- Court specifies in the disposition order: the number of days the child is to be held in secure juvenile detention; that the secure juvenile detention complies with federal and state laws; and that the court may, within its discretion, suspend the secure juvenile detention should a less restrictive alternative become available.

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U.R.Y.C.P. 10, 11; Miss. Code Ann. § 43-21-301(6).

15

## CIVIL COMMITMENT

- Any appropriate disposition designed for the **treatment and care of a child** in need of special care, including **civil commitment** to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;
- Civil commitments to be completed pursuant to the same procedures as Chancery Court, section 41-21-61, et seq. of the Mississippi Code.
  - Remember deadlines
    - Appointed examiner's report due within 48 hours after order for examination issued per section 41-21-69
    - Hearing within 7 days of filing of examiner's report, unless extension requested for 10 days after filing per section 41-21-73
- Note: Youth Court records containing medical examinations and mental health examinations as defined in sections 43- 21-251(1)(c)(ii) and (iii) cannot be destroyed by the Mississippi Department of Archives and History (MDAH). Exception: If the records involve a child who has since turned twenty-eight (28) years of age and is not under a medical status disability.

16



## ALTERNATIVES TO CIVIL COMMITMENT

- Evaluate outpatient care
  - Outpatient treatment options
  - Short-term inpatient options
  - Mississippi Youth Programs Around the Clock (MYPAC)
    - A home and community- based Medicaid program for children and youth with Serious Emotional Disturbance (SED), that follows the High Fidelity Wraparound process.
  - In-circle Intensive In-home Services
    - Administered by Canopy Children's Solutions to provide family preservation solutions, particularly when minors are at risk of removal from the home. Referrals to be made through MDCPS.

17

## YOUTH CHALLENGE ACADEMY

- Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard.
- Recommendation not sentencing—Youth Challenge Academy is a voluntary program.
- The Residential Phase is a 22-week military-based training and education program that focuses on the development of the whole person. The National Guard Bureau developed and is using an intervention model with eight core components: leadership and followership; service to the community; job skills; life coping skills; education excellence; responsible citizenship; health; sex education and nutrition; and physical fitness.
- Minors that complete the eight core components and pass their GED receive a high school diploma.
- The Post Residential Phase is the one-year period following graduation from the Residential phase where a mentor provides advice and assistance, regular monitoring of the graduate's status, progress in obtaining employment and/or pursuing further education, and providing support within the means of the program.

[www.msyouthchallenge.org](http://www.msyouthchallenge.org)

18

## DETENTION

- Order the child into a juvenile detention center operated by the county or into a **juvenile detention center** operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing delinquents.
- The time period for detention **cannot exceed ninety (90) days**.
- Any detention exceeding forty-five (45) days shall be administratively reviewed by the youth court no later than forty-five (45) days after the entry of the order.

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U.R.Y.C.P. 26 and 27; Miss. Code Ann. § 43-21-605.

19

## FINES AND RESTITUTION

- Civil fines not in excess of Five Hundred Dollars (\$500.00).
- Restitution not in excess of actual damages caused by the child.
- Restitution to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year.
  - Example of performance:
    - Replacement of broken portion of neighbor's fence.

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Miss. Code Ann. § 43-21-607.

20

## OAKLEY YOUTH DEVELOPMENT (TRAINING SCHOOL)

- State's only secure facility for housing youth who have been adjudicated of what would be a felony if an adult
- Accepts minors ages ten (10) – seventeen (17), but a minor cannot be retained past his/her twentieth (20<sup>th</sup>) birthday
- Facility administration determines length of stay based upon risk score

Level	1 <sup>st</sup> Commitment Weeks	2 <sup>nd</sup> Commitment Weeks	3 <sup>rd</sup> + Commitment Weeks
7	40	45	50
6	35	40	45
5	30	35	40
4	25	30	35
3	20	25	30
2	15	20	25
1	10	15	20

- Length of stay may be revised based upon earned incentives, eligibility for early release
  - Points for each day of good behavior (.33 for each day)
  - One (1) to two (2) weeks off sentence for no damage to property
  - Four (4) hours of on campus work equals day off commitment time

Length of stay provided by MDYS and incentives provided by Oakley Youth Development, 10/2019.

21

## OAKLEY YOUTH DEVELOPMENT (TRAINING SCHOOL)

<u>CY 2017</u>	<u>CY 2018</u>
■ 190 ADMISSIONS	150 ADMISSIONS
■ 44 COUNTIES REPRESENTED	42 COUNTIES REPRESENTED
■ 13% FEMALE 87% MALE	7% FEMALE 93% MALE
■ 19% WHITE OR OTHER 81% BLACK	21% WHITE OR OTHER 79% BLACK
■ 85% 15 YRS OR OLDER	81% 15 YRS OR OLDER

- Pursuant to section 43-27-25 of the Mississippi Code, no child who is seriously handicapped by mental illness or retardation shall be referred to a state-supported training school.
- Division of Youth Services must have all medical and mental records prior to accepting a youth into a training school.
- The youth court should review the medical and mental records prior to the youth's commitment. Failure to have the medical and mental records will result in the youth not being admitted to the training school. See Order Regarding Suicide Prevention Action plan, Civil Action No.: 3:03-cv-1354-HTW-JCS (S. Miss. Apr. 30, 2008).

Statistics provided by Oakley Youth Development, 10/2019.

22

# EDUCATING THE JUDICIARY

23

## BRAIN DEVELOPMENT IN ADOLESCENTS

- Educate court on brain development in adolescents:
  - Less able to control impulses
  - Less able to evaluate short term benefits as compared to long term consequences
  - More susceptible to peer influences
  - Through maturation become less impulsive and more capable of making considered decisions

Roper v. Simmons, 543 U.S. 551, 569-570 (2005); Graham v. Florida, 560 U.S. 48, 48, 130 S. Ct. 2011, 2014, 176 L. Ed. 2d 825 (2010); Miller v. Alabama, 132 S. Ct. 2455, 2460, (2012).

24

## TRAUMA

- Minor's needs in relation to trauma
  - Effect of trauma on minor's youth and behavior
    - Interrupt cognitive development
    - Increased risk of depression and PTSD
    - Exhibiting negative behaviors (aggression, mood dysregulation, drug and alcohol use, self-harm, etc.)
  - ACEs (Adverse Childhood Experiences) scoring
  - Focus on therapeutic approaches

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National Child Traumatic Stress Network Bench Card, [www.nctsn.org](http://www.nctsn.org)

25

## MANDATORY REPORTER

- Persons with reasonable cause to suspect child abuse or neglect must report that information to MDCPS.
- “Abused Child means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused upon said child sexual abuse, sexual exploitation, emotional abuse, mental injury, non-accidental physical injury or other maltreatment. Provided, however that physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.”
- Mississippi Centralized Intake at [1-800-222-8000](tel:1-800-222-8000) (Nationwide) or [\(601\) 432-4570](tel:601-432-4570) or <https://reportabuse.mdcps.ms.gov>

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Miss. Code Ann. § 43-21-105.

26

## IMPLICIT BIAS

- Implicit bias is...
  - Disparate treatment of minority individuals
- Long-reaching impact of implicit bias
- Judges, prosecutors, defense attorneys, and all other actors in the criminal justice system need to constantly counteract the risk that we all have implicit biases.

Helping Courts Address Implicit Bias: Resources for Education, <https://www.flcourts.org/content/download/217600/file/Diversity-Implicit-Bias-Resources-for-Education-NCSC.pdf>

27

## ALWAYS CONSIDER DETENTION ALTERNATIVES

- Detention reform
  - Exposure to negative peer influences
  - Self-identification as an offender
  - Increase recidivism among youth offender

Trauma and Delinquency Juvenile Detention Alternatives Initiative (JDAI) (2015); The Dangers of Detention: The impact of Incarcerating Youth in Detention and Other Secure Facilities Justice Policy Institute, (2006).

28

# ADVOCATING FOR CLIENT

29

## *IN RE GAULT*, 387 U.S. 1. (1967)

- Turning point for rights of juveniles
- Minors are entitled to the same due process rights as adults
  - Right to an attorney
  - Right to remain silent
  - Right to notice of charges
  - Right to a full hearing on the merits
- Formalized trial phase of delinquency cases, and established fundamental rules for the relationship between counsel and juvenile client
  - Minor is the client and directs representation

30

## EVIDENCE AT DISPOSITION

- M.R.E. 1101(b)(3)- MS Rules of Evidence, except for privilege, do not apply to disposition hearings or granting or revoking probation.
- *S.C. v. State*, 795 So. 2d 526, 529 (Miss. 2001) ("The youth court may hear any evidence that is material and relevant to [the] disposition of the cause, including hearsay and opinion evidence.")
- *In re R.D.*, 658 So. 2d 1378, 1383-84 (Miss. 1995) ("Dispositional hearings in youth courts are very informal, allowing for hearsay testimony as well as reports from various individuals or agencies who have information concerning the well being and "best interest" of the minors before the court.").

31

## STANDARD TERMS OF PROBATION

- Obey all laws
- Attend school with no unexcused absences
- Obey the rules of the home
- Meet with Division of Youth Services (DYS) Counselor at least once per month
- Curfew

32



## INDIVIDUALIZED TERMS OF PROBATION

- Conditions that focus on therapeutic approach of controlling behavior
  - Client specific
  - Specifically designed to address the behavior
  - Focus on personal development
  - Incentives
  - Graduated responses
- 

33

## STATUS OF CHILD'S FORMATIVE NEEDS

- Parent/Guardian
  - Mentors (e.g. extended family, church, coach, etc.)
  - Physical Health
  - Mental Health
  - Education (e.g. IEP, clothes, glasses, etc.)
  - Job Skills
  - Peer Relationships
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34

## COUNSEL'S ROLE IN DISPOSITION

- Carefully advocate for the goals of probation—focus on rehabilitation and recidivism (public safety)
- Dependent upon circumstances and characteristics of child
- Consideration of length
- Consideration of specific conditions
- DYS vs. other service delivery system
- Recognition that society has reasonable expectation of accountability

35

## EDUCATION LAW

- Individualized Educational Program/Plan (IEP) can offer insight into why a minor exhibits certain behaviors
- IEP may offer information as to disability and reason for certain behaviors
- IEP can assist child's lawyer in placing the onus on the correct party because failure to understand a child's documented diagnosis is a hallmark of parental limitations
- Knowledge about the IEP, disability, and accommodations is key—can mean the difference between long-term detention and rehabilitation within the community
- Court is required to consider academic and developmental needs of child at disposition

Ordovery, E.L., When Schools Criminalize Disability, 2001, [www.cleweb.org](http://www.cleweb.org); Burrell & Warboys, Special Education and the Juvenile Justice System, Juvenile Justice Bulletin, July 2000.

36

## UNINTENDED CONSEQUENCES OF PROBATION

- Consideration of unintended consequences of probational conditions:
  - Collateral consequences of adjudication
  - Removal from extracurricular activities
  - Removal from mainstream classrooms
  - Impossible time/financial burden on family
  - Loss of financial benefits to family (e.g. SSI)

37

## COMMUNITY-BASED REHABILITATION ADEQUATE

- Commitment of child in most cases is not necessary
  - Unintended consequences:
    - Trauma
    - Exposure to negative peer influences
    - Self-identification as “criminal”
    - Increase recidivism

38

## LONG TERM COLLATERAL CONSEQUENCES OF ADJUDICATION

- Disparate treatment at school
  - Loss of benefits, e.g. public housing
  - Immigration consequences
  - Ability to attend college or obtain student loans
  - Employment opportunities, including military
  - Entry into professions
  - Sex offender registry
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39

## YOUR CLIENT'S STORY

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40

## MDYS COUNSELORS

- Role is as a probation officer (not a counselor)
- Conduct pre-dispositional investigation
  - Interview with parent(s)/guardians(s)
  - Interview with minor offender
  - SAVRY (Structured Assessment of Violent Risk in Youth)
  - Gathering information about minor child
    - Prior Youth Court history (abuse/neglect and delinquent)
    - School records
    - Mental health record
- Prepare a “Social Summary” to assist court in making dispositional decisions

41

## MEETING WITH DYS BEFORE REPORT PREPARATION

- Counsel should play an active role in disposition
- DYS counselor is most likely to affect the final disposition with his/her recommendation
- Biases affect judgment
- Counsel can assist in the recommendation
  - Bring attention to favorable information
  - Discuss possible dispositions advantageous to client
  - Advocate for client by speaking about client positively
  - Acknowledge areas where client needs assistance

42

## CLIENT'S PRE-DISPOSITION BEHAVIOR

- No other referrals
  - School attendance
  - Grades
  - Behavior at home
  - Cooperation with DYS during assessment
  - Behavior under current court conditions (detention, ankle monitor, etc.)
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43

## DIFFICULT CASES

- Look how well my client is doing based on his/her circumstances...
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44

## EVIDENCE FOR MITIGATION

- Interview parent(s)/guardians(s)
- Letters of support, good character, and/or community relationship
  - Teacher, coach, employer, minister, neighbor
- Documentation of plan for client
  - Family placement, counseling, etc.

45

## SUBSTANCE ABUSE

- Evaluation of substance abuse issues
- Options to address issue
- Self-medication due to untreated trauma or mental health issues or lack of coping skills

46

# CREATIVE PROBATIONARY OPTIONS

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47

## INFORMAL ADJUSTMENT

- Request an informal adjustment after adjudication
    - Informal Adjustment is generally only available to first time offenders.
    - A juvenile's participation in an informal adjustment may not exceed six (6) months, unless extended agreement of minor's attorney and approval of Court.
    - Terms are set for the Informal Adjustment, including an informal probationary period for monitoring not to exceed six (6) months.
      - Other terms may include school with no unexcused absences, follow household rules, curfew, writing an essay, community service, school attendance, drug screens, etc.
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48



## NON-ADJUDICATION

- Request a non-adjudication
  - Request that court withhold or defer adjudication.
  - If client completes conditions of probation that the case is dismissed.
  - Argue what is in the “best interest of the minor child.”

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49

## REPORTS OR ESSAY

- Book Reports
- Researched Paper on Assigned Topic
- Paper on “What I Learned”
- Examples
  - Why what I did was wrong.
  - Consequences of my behavior.
  - My future goals (for education, employment, family, etc.).

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50

## PARTICIPATION IN EXTRACURRICULARS

- Sports teams
  - School based extracurricular activities
    - Debate/Mock trial
    - eSports
    - STEM
    - Robotics
    - Music/Band/Theater
  - School-tutoring
  - Community group
  - Church youth group
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51

## COMMUNITY SERVICE

- Allows child to give back to the community
  - Allows child to pay debt to society
  - Enables the building of new skills
  - Enhances self-esteem
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52

## COMMUNITY SERVICE EXAMPLES

- Examples:
    - Trash pick-up
    - Church volunteer
    - Non-profit volunteer
      - Habitat for Humanity
      - Animal shelter
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53

## COUNSELING

- Individual counseling
  - Group counseling
  - Family counseling
  - Parental compliance
    - Counseling
    - Medication management
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54

## LETTERS OF APOLOGY

- Letter to victim
  - Letter to parent/guardian
  - Letter to Court
  - Request that a copy of letter not be distributed
  - ALWAYS review client letters before distribution
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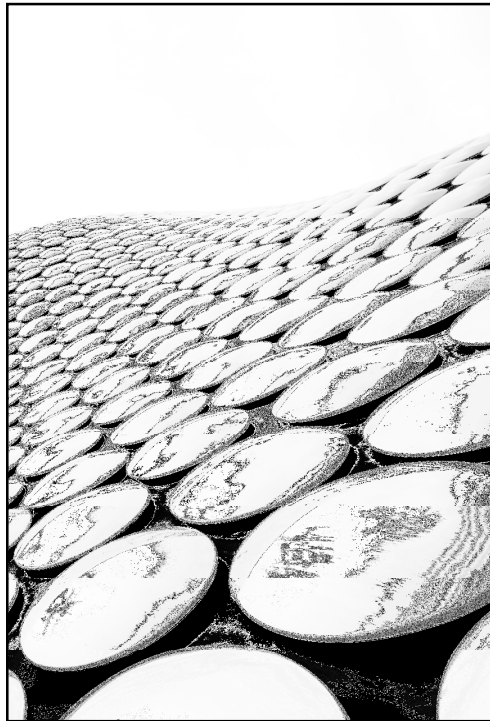
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## MEETING THE NEEDS OF CLIENT

Requests for an order to have parent/guardian meet the child's needs:

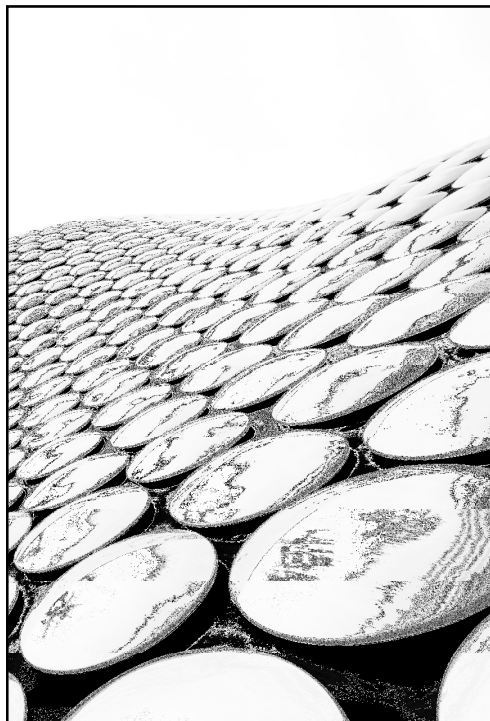
- Eye Glasses
  - State Identification (for Employment)
  - Regular Attendance at Counseling
  - Attaining or Recertification for Insurance
  - Continued Participation in Extracurriculars
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56



QUESTIONS?

57



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58